

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

JOSE DAVILA, )  
                    )  
Plaintiff,       )  
                    )  
v.                   ) C.A. No. 04-12637-RGS  
                    )  
KATHLEEN DENNEHY, Commissioner,       )  
Department of Corrections, et al.,      )  
                    )  
Defendants.       )

ORDER ON APPLICATION TO PROCEED  
WITHOUT PREPAYMENT OF FEES

Now before the Court is plaintiff's Application to Proceed Without Prepayment of Fees and Affidavit:

FINDINGS

The Court finds the following:

A. Is plaintiff a "prisoner" as defined in 28 U.S.C. § 1915(h)?

Yes  No

B. Is a filing fee, under 28 U.S.C. § 1915(b), to be assessed at this time?

1. Yes  Plaintiff is obligated to pay the statutory filing fee immediately. See 28 U.S.C. § 1915(b)(1). (\$150.00 for a civil action or \$105.00 for a notice of appeal).

2. Yes  An initial partial filing fee of \$2.40 is assessed pursuant to 28 U.S.C. § 1915(b)(1). The remainder of the fee \$147.60 is to be assessed in accordance with 28 U.S.C. § 1915(b)(2).

3. Yes  Plaintiff has proffered evidence of being without funds for six months and being currently without funds. Under 28 U.S.C. § 1915(b)(2), plaintiff is assessed an obligation to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account each time it exceeds \$10.00 towards the payment of the

\$150.00 filing fee.

4. No  Plaintiff is not assessed a filing fee at this time.

C. After screening pursuant to 28 U.S.C. § 1915 and/or 28 U.S.C. § 1915A, the Court finds this action is subject to dismissal for the reasons set forth in a separate Memorandum and Order.

ORDERS

Based upon the foregoing, it is ORDERED:

1. The application to proceed without prepayment of fees is GRANTED.
2. The clerk shall not issue summonses at this time pending further review of this case in accordance with the Memorandum and Order for the Plaintiff to show cause within forty-two (42) days why this action should not be dismissed or to file an amended complaint in accordance with the Memorandum and Order.
3. The clerk shall, in accordance with 28 U.S.C. § 1915(b)(2), send a copy of this Order to the institution having custody of plaintiff.

January 5, 2005  
DATE

/s/ Richard G. Stearns  
UNITED STATES DISTRICT JUDGE